

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

Joseph Guglielmo,	:	Case No. 3:17-cv-6
	:	
Plaintiff,	:	Judge Thomas M. Rose
v.	:	
	:	
Montgomery County, Ohio et al.,	:	<u>PLAINTIFF’S MEMORANDUM IN</u>
	:	<u>OPPOSITION TO DEFENDANTS’</u>
Defendants.	:	<u>MOTION TO CONTINUE TRIAL</u>
	:	<u>DATE (Doc. 206)</u>
	:	

Plaintiff Joseph Guglielmo opposes Defendants’ motion to postpone the June 17, 2019 jury trial, which was set by agreement of all counsel eight months ago. Plaintiff stands ready for trial.

Defendants state all parties would be “well served” by a continuance. Joseph Guglielmo, age 61, would not be well served by a delay in starting this trial. When this Court convened a conference on September 21, 2018, Plaintiff’s counsel reluctantly did not object to postponing the October trial date given that the briefing on Defendants’ summary judgment motion had only recently closed. At that conference, the Court set the trial for the first date convenient for all counsel and stated that this case would take priority over other civil matters and that criminal matters would be steered around this case as much as possible. Defendants’ only reason for delay is that the Court’s ruling on their motion for summary judgment is pending. This is not a sufficient reason for delaying trial. Plaintiff’s counsel routinely encounter the need to prepare for trial while awaiting significant court decisions. Trial attorneys are able to adjust strategy and trial planning after a Court rules on dispositive motions, motions in limine, jury instructions, and even significant evidence rulings during trial – this is what trial lawyers do. Defendants have

been represented by a significant number of attorneys in the past and currently, including at this moment five attorneys, in three cities, from Marshall Dennehey Warner Coleman & Goggin. In addition, the Defendant's counsel have access to a deep bench of resources from their firm. Therefore, it is difficult to believe that Defendants' counsel cannot be ready for a trial that has been scheduled for eight months.

Plaintiff also disagrees with Defendants claim that the pending summary judgment motion involves legal issues that are complex and wide-ranging. Plaintiff opposed summary judgment by arguing that there are material facts in dispute. If the Court agrees, Plaintiff's counsel stated at the September 21, 2018 conference, that they would oppose any attempt by a defendant to file an interlocutory appeal by filing a motion asking this court to certify the appeal as frivolous and to preserve the June 17, 2019 trial date. In this circuit, "the refusal to concede factual questions to a plaintiff will typically doom a defendant's interlocutory appeal on qualified immunity." *Everson v. Lies*, 556 F.3d 484, 496 (6th Cir. 2009). District courts "have jurisdiction to certify an interlocutory appeal from the denial of qualified immunity as frivolous." *Dickerson v. McClellan*, 37 F.3d 251, 252 (6th Cir. 1994). Defense counsel indicated that Defendants would not file a frivolous appeal. Given this conversation eight months ago, Defense counsel should have been prepared for trial to begin June 17, 2019 should their motion be denied.

For these reasons, Plaintiff respectfully requests Defendants' motion to continue the trial date be denied and the trial date of June 17, 2019 remain.

Respectfully submitted,

Nathan J. Stuckey (0086789)
Attorney for Plaintiff
The Stuckey Firm, LLC

/s/ Jennifer L. Branch
Jennifer L. Branch (0038893)
Trial Attorney for Plaintiff

735 N. Limestone Street
Springfield, Ohio 45503
P: (937)346-8000
F: (937)717-0070
nstuckey@legalspringfield.com

Douglas D. Brannon (0076603)
BRANNON & ASSOCIATES
130 W. Second St. Suite 900
Dayton, OH 45402
Telephone: (937) 228-2306
Facsimile: (937) 228-8475
E-Mail: dougbrannon@branlaw.com

Alphonse A. Gerhardstein (0032053)
Gerhardstein & Branch, Co LPA
441 Vine Street, Suite 3400
Cincinnati, Ohio 45202
(513) 621-9100
Fax (513) 345-5543
jbranch@gbfirm.com
agerhardstein@gbfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2019, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically.

/s/Jennifer L. Branch
Attorney for Plaintiff